

## **MEMORANDUM OF UNDERSTANDING**

### **REGARDING TRANSFER OF ASSETS AND OPERATIONS FROM TIMBER SPRINGS METROPOLITAN DISTRICT TO TIMBER SPRINGS PROPERTY OWNERS ASSOCIATION**

This Memorandum of Understanding (“Agreement”) is entered into this 9<sup>th</sup> day of August, 2018, by **TIMBER SPRINGS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”) and the **TIMBER SPRINGS PROPERTY OWNERS ASSOCIATION**, a Colorado nonprofit corporation (“Association”) (District and Association being singularly referred to as “Party” and jointly referred to as “Parties”).

#### **RECITALS**

**WHEREAS**, the District is organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide streets/roads, traffic and safety controls, drainage, irrigation and design review and covenant enforcement within the jurisdictional boundaries of the District, which boundaries are located within Eagle County, Colorado; and

**WHEREAS**, the Association is a Colorado nonprofit corporation incorporated under the laws of the State of Colorado with the purpose of exercising the functions as set forth in the declaration of covenants, conditions, restrictions and easements signed on June 7, 2001; and

**WHEREAS**, both the District and the Association have the authority to provide road, traffic and safety controls, drainage, irrigation, design review and covenant enforcement services to the Timber Springs Community; and

**WHEREAS**, one of the major benefits of the District under prior income tax law was the ability for taxpayers to deduct property tax payments on their federal income tax return; and

**WHEREAS**, the Tax Cuts and Jobs Act of 2017 substantially reduced or eliminated the ability of taxpayers to deduct property tax payments on their federal income tax return substantially reducing this benefit of the District; and

**WHEREAS**, the parties have determined that it is in the best interest of the constituents of the District and the Association to provide road, traffic and safety controls, drainage, irrigation, design review and covenant enforcement services through the Association rather than through the District; and

**WHEREAS**, the Parties desire to establish an agreement and understanding for the District to transfer funds it has collected for the purpose of providing road, traffic and safety controls, drainage, irrigation, design review and covenant enforcement services in and for Timber Springs to the Association in exchange for the Association agreeing to assume the responsibility to provide such services in the future; and

**WHEREAS**, the transfer of funds and responsibility to provide services from the District to the Association will serve a public purpose and will promote the health, safety, security and general welfare of the inhabitants and visitors of the Parties and the State of Colorado.

NOW THEREFORE, IN CONSIDERATION of the above recitals, the mutual commitments contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

### **AGREEMENT**

1. District's Commitments. The District agrees to:
  - (a) Continue to provide road, traffic and safety controls, drainage, irrigation, design review and covenant enforcement services in and for Timber Springs through December 31, 2018; and
  - (b) Transfer the responsibility to provide such services along with all remaining unexpended funds collected for such purposes to the Association as of December 31, 2018.
  
2. Association Commitments. The Association agrees to:
  - (a) Assume responsibility to provide road, traffic and safety controls, drainage, irrigation, design review and covenant enforcement services in and for Timber Springs beginning January 1, 2019; and
  - (b) Expend the funds received from the District to provide such services; and
  - (c) If requested by District, to provide a full accounting of the expenditure of funds received from the District; and
  - (d) As long as the District remains inactive, provide limited administrative services on behalf of the District to maintain the District's minimum compliance requirements of Colorado Department of Local Affairs and Colorado Office of the State Auditor for budget filings, applications for exemption from audit, election filings and other similar filings.

3. Annual Appropriations. Notwithstanding the provisions of this Agreement to the contrary, the terms and obligations of this Agreement are subject to annual appropriations by the Parties so as to not create a multiple fiscal year obligation pursuant to Article X, Section 20 of the Colorado Constitution.
4. Term and Termination. The term of this Agreement shall be through the end of the year in which it is entered, and this Agreement shall be automatically renewed for additional one (1) year terms in perpetuity unless terminated as hereinafter provided or the District is dissolved in accordance with § 32-1-701(1), C.R.S. Additionally, either Party may terminate this Agreement upon thirty (30) days written notice to the other Party for any reason or no reason.
5. Notices. Any formal notice, demand or request pursuant to this Agreement shall be in writing and shall be deemed properly served, given or made, if delivered in person or sent by certified mail postage prepaid to the Parties at the addresses listed by the signatures below or as otherwise modified pursuant to this Section.
6. Amendments. This Agreement may be amended only by written document signed by the Parties.
7. Severability. In the event that any of the commitments or conditions of this Agreement or their application shall be held invalid as to any person, entity or circumstance by any court having competent jurisdiction, the remainder of this Agreement and the application in effect of its terms, covenants or conditions to such persons, entities or circumstances shall not be effected thereby.
8. Entire Agreement. This Agreement embodies the complete agreement between the Parties regarding the subject matter herein and supersedes all prior agreements and understandings, if any.
9. Section Headings. The section headings in this Agreement are inserted for convenience and are not intended to indicate completely or accurately the contents of the Sections they introduce, and shall have no bearing on the construction of the Sections they introduce.
10. No Third Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement.

11. Duly Authorized Signatories. By execution of this Agreement, the undersigned each individually represent that he or she is duly authorized to execute and deliver this Agreement.

EXECUTED as of the date first written above.


TIMBER SPRINGS METROPOLITAN  
DISTRICT

By

  
Gerald Fiala, President


Address: c/o Marchetti & Weaver, LLC  
28 Second Street, Suite 213  
Edwards, CO 81632

Attest:

  
Michael Berry, Assistant Secretary


TIMBER SPRINGS PROPERTY OWNERS  
ASSOCIATION

By

  
Pat Martin, President

Address: c/o Marchetti & Weaver, LLC  
28 Second Street, Suite 213  
Edwards, CO 81632

Attest:

  
Michael Barry, Secretary

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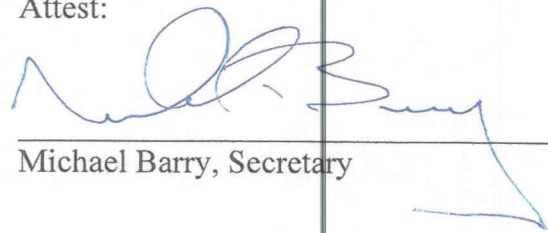
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